IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7382 of 2007()

CRIME NO.241/07 OF CHIRAYINKEEZHU POLICE STATION

PETITIONERS/ACCUSED 1 TO 3:

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1. SUJATHA, LEKSHMI BHAVAN,
   VALIYAKADA, CHIRAYINKEEZHU,
   THIRUVANANTHAPURAM.

2. R.GEETHAKUMARI, KIZHAKKEVILAKATH VEEDU,
   PANDAKASALA, CHIRAYINKEEZHU,
   THIRUVANANTHAPURAM.

3. VILASALATHIKA, PUTHENVILA,
   PARAYATHUKONAM, KIZHUVILAM,
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.R.RAJESH

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7382 OF 2007

Dated this the 30th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 3 in a crime registered alleging offences punishable, inter alia, under Secs.120B and 468 of the IPC. The crime has been registered on the basis of a complaint filed by the de facto complainant before the Circle Inspector of Police which was forwarded to the Police Station for investigation. The de facto complainant, her two sisters and their deceased brother Ramesan were the joint owners of an item of property left behind by their father. The said item of property was offered as security before the bank and a loan was availed by the said Ramesan along with the three other women who claimed to be the de facto complainant and her two sisters. The de facto complainant complains that she and

her sisters had not entered into any such transaction and the petitioners herein had fraudulently claimed to be the de facto complainant and her sisters and entered into the loan transaction with the bank along with the brother of the de facto complainant – Ramesan, who is now no more. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. The brother of the de facto complainant – Ramesan, had some disagreement with his wife and he was earlier residing along with his sisters. Subsequently, the said Ramesan had left the de facto complainant and his sisters. The said Ramesan was friendly with the petitioners and he had got the photographs of the petitioners from the petitioners without disclosing the real purpose. Even assuming that the said Ramesan had misused the photographs of the petitioners to enable him to avail loan from the bank, the petitioners cannot in any way be mulcted with any culpable liability. The petitioners may, in these circumstances, be granted anticipatory bail, prays the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The allegations raised against the petitioners are serious. They

have impersonated and represented themselves to be the de facto complainant and her two sisters to enable the said Ramesan to siphon out the funds from the bank. In that process the de facto complainant and her sisters were deceived also. There is no merit whatsoever in the contention that the petitioners had unnecessarily handed over their photographs only to the said Ramesan. The materials presently collected clearly and without any doubt disclosed that the petitioners had appeared before the bank, had produced the forged identity cards, had misrepresented themselves to be de facto complainant and her two sisters and had executed the documents which were purportedly executed by the de facto complainant and her two sisters. In any view of the matter, this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioners. The petitioners may be directed to resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail in the usual course, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. I shall carefully avoid any detailed discussions on merits about the

acceptability of the allegations or the credibility of the data collected. Suffice it to say that having anxiously considered all the relevant inputs, I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge